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HOUSE BILL 2233 By
Odom

SENATE BILL 2504
By Crutchfield

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18 and Title 58, Chapter 2, relative to price-gouging.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Price-Gouging Act of 2002."

SECTION 2. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following new part:

47-18-5101. The general assembly finds and declares that:

- (1) The threats of terrorism are real and could impose horrific social and economic damage on Tennessee;
- (2) Terrorist attacks can dismantle the stability of markets and free trade;
- (3) Pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, but when a declared state of emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of consumer goods and services should be discouraged;

(4) Because of the September 11, 2001, terrorist attacks that took place in New York and Washington, D.C., some businesses across Tennessee engaged in the economic practice commonly known as price-gouging;

(5) Protecting the public from price-gouging is a vital function of state government in providing for the health, safety, and welfare of consumers;

(6) The intent of the general assembly in enacting this act is to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency for goods and services that are vital or necessary for the consumer. Further, it is the intent of the general assembly that this act be liberally construed so that its beneficial purposes may be served.

47-18-5102. As used in this part, unless the context otherwise requires:

(1) "Goods" has the same meaning as provided in Section 47-18-103(5).

(2) "Person" has the same meaning as provided in Section 47-18-103(9).

(3) "Services" has the same meaning as provided in Section 47-18-103(10).

(4) "State of emergency" means a natural or man-made disaster or emergency resulting from terrorist attack, war, strike, civil disturbance, tornado, earthquake, fire, flood, or any other natural disaster declared by the president of the United States or by the governor:

(A) Pursuant to this part either on the governor's initiative or pursuant to petition of a local governmental chief executive or legislative body ; or

(B) Pursuant to Title 58, Chapter 2, Part 1.

47-18-5103. Upon the proclamation of a state of emergency and continuing during the state of emergency and for a period of thirty (30) days after the state of emergency is terminated, it is unlawful for any person to charge any other person a price

for goods or services that is grossly in excess of the price generally charged for the same or similar goods or services in the usual course of business immediately prior to the events giving rise to the state of emergency. An otherwise grossly excessive price increase shall not be unlawful if the person charging such higher price establishes by prima facie evidence that the increase was directly attributable to additional costs imposed on it by the supplier of the goods or services, or was directly attributable to additional costs for labor or materials used to provide the goods or services.

47-18-5104.

(a) In the event of a state-wide or regional shortage or threatened shortage of a product or service due to an abnormal market disruption resulting from terrorist attack, war, strike, civil disturbance, tornado, earthquake, fire, flood, or any other natural disaster, the governor may proclaim that a supply emergency exists. Upon the declaration of a supply emergency, the governor may in connection therewith issue orders designating a good or service to be in short supply or in danger of becoming in short supply in the state or in a specific region of the state and imposing price restrictions or rationing with respect to such goods or services. Prior to the issuance of such an order, the governor shall make written findings that there is an abnormal market disruption, that the goods or services are in short supply or are in danger of becoming in short supply due to such disruption, that the goods or services are essential to the health, safety, and welfare of the people, and that the imposition of the price restrictions on the goods or services or rationing of the goods is necessary to assure the health, safety, and welfare of the people of the state. The commissioner of commerce and insurance shall promulgate rules and regulations concerning the rationing of goods or services designated by the governor to be in short supply or in danger of becoming in short supply under this subsection.

(b) Any order issued pursuant to this section shall become effective upon its filing in the office of the secretary of state and with the clerks of the senate and house of representatives and shall remain in effect during the supply emergency and for a period of thirty (30) days after the supply emergency is terminated. Such order shall be published in full at least once in a newspaper of general circulation in each county that is affected by the shortage; provided, that failure to publish shall not impair the validity of such order.

(c) Any order issued pursuant to this section may be disapproved by a constitutional majority vote of both the senate and the house of representatives. Such disapproval shall become effective immediately after adoption by both houses of the general assembly and the filing of notice of such disapproval with the secretary of state.

47-18-5105.

(a) Violation of any provision of this part, or any rules and regulations promulgated hereunder, constitutes an unfair or deceptive act or practice under Section 47-18-104(a) and is a Class A misdemeanor, punishable by imprisonment not to exceed eleven (11) months twenty-nine (29) days or a fine not to exceed one thousand dollars (\$1,000), or both, for each offense. A civil action for violation of this part may be brought under Title 47, Chapter 18, Part 1.

(b) The remedies and penalties provided in this section are cumulative. Nothing in this part shall pre-empt any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same conduct prohibited in this part.

SECTION 3. This act shall take effect July 1, 2002, the public welfare requiring it.

